

REMARKS

The Application has been carefully reviewed in light of the Office Actions mailed December 20, 2004 and January 11, 2005. At the time of the Office Action (dated December 20, 2004), Claims 1-62 were pending in this patent application. Reconsideration and allowance of all pending claims is respectfully requested in view of the following remarks.

Rejection to Specification:

The Specification has been amended in the manner specified by the Examiner.

Rejections Under 35 U.S.C. § 103:

Claims 1, 2, 5, 9-10, 12-13, 16, 20, 23, 27-28, 30-31, 34, 39, 42, 46-47, 52, 57-59, and 62 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 2002/0006124) to Jimenez et al. ("Jimenez") in view of U.S. Patent No. 2003/0212759 to Wu ("Wu"). However, the Examiner has not set forth a prima-facie case of obviousness under 35 U.S.C. 103(a). First, the Examiner has not demonstrated a suggestion to combine the references of Jimenez and Wu. To state that "one of ordinary skill in the art at the time of the invention would have been motivated...so that users can listen to advertisements" is not relevant in any manner to a suggestion, as opposed to mere desirability, to combine or modify their disclosed inventions in a manner that teaches or suggests the inventions recited by the currently pending claims. Second, the Examiner is impermissibly using hindsight to select features and functionality of both references and combining them to achieve advantages of the presently recited claims. Third, the Examiner is using the publication of the Wu reference despite the fact that both its

publication and filing date occur after the original priority date of the currently pending application. While it is true that the Wu reference claims priority to a provisional application filed just three days before the priority date of the present application, Applicants have not been given an opportunity to review the text of the original filing to ascertain its disclosure. Thus, Applicants respectfully submit that the rejection of the aforementioned claims under 35 U.S.C. 103(a) is improper and that the claims are allowable over the recited prior art. As the remaining pending claims depend from certain of the same aforementioned claims, Applicants respectfully submit that such claims are also allowable. Reconsideration and favorable action are requested.

CONCLUSION

For the foregoing reasons, and for other apparent reasons, Applicants respectfully request reconsideration and favorable action. If the Examiner feels a telephone conference or an interview would advance prosecution of this Application in any manner, the undersigned attorney for Applicants stands ready to conduct such a conference at the convenience of the Examiner.

An extension fee of a sufficient amount for a three-month extension is believed to be enclosed herewith. Applicants believe that no other fee is due. However, the Commissioner is hereby authorized to charge any deficiency or credit any overpayment to Deposit Account No. 50-2816 of Patton Boggs, L.L.P.

Respectfully submitted,

PATTON BOGGS, LLP



Darren W. Collins
Registration No. 44,625

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Correspondence Address:

Customer No.: 44124